

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

BENSHOT, LLC, a Wisconsin Limited
Liability Company,

Plaintiff,

v.

Case No.: 18-CV-1716

LUCKY SHOT USA LLC, a Florida
Limited Liability Company, and

2 MONKEY TRADING LLC, a Florida
Limited Liability Company,

Douglas Ingalls
Defendants.

FIRST AMENDED COMPLAINT

Plaintiff BenShot, LLC, a Wisconsin Limited Liability Company (“BenShot”), by its attorneys, as and for its Complaint against Defendants Lucky Shot USA LLC, a Florida Limited Liability Company (“Lucky Shot USA”) and 2 Monkey Trading LLC, a Florida Limited Liability Company (“2 Monkey”) and Douglas Ingalls (“Ingalls”), a Florida Resident allege as follows:

PARTIES

1. BenShot is a Wisconsin Limited Liability Company with its headquarters located at 140 Industrial Park Avenue, Hortonville, Wisconsin 54944. BenShot manufactures, promotes, sells, and distributes unique drinking glasses and sells its products throughout the United States, including the State of Wisconsin.

2. Lucky Shot USA is a Florida Limited Liability Company with its headquarters located at 3601 Vineland Rd. Suite 14, Orlando, Florida 32811 and whose registered manager is Douglas Ingalls. Lucky Shot USA promotes, sells and distributes products made from used ammunition

and artillery shells. Lucky Shot USA operates and does business as the storefront “Lucky Shot USA” on www.Amazon.com and sells its products in interstate commerce, including the State of Wisconsin and the Eastern District of Wisconsin.

3. 2 Monkey is a Florida Limited Liability Company with its headquarters also located at 3601 Vineland Rd. Suite 14, Orlando, Florida 32811 and whose registered manager is also Ingalls. 2 Monkey is the parent company of Lucky Shot USA and designs, promotes, sells, and distributes products, including Lucky Shot branded products. 2 Monkey acts in concert with Lucky Shot USA to sell Lucky Shot branded products and sells its products in interstate commerce, including the State of Wisconsin and the Eastern District of Wisconsin.

4. Douglas Ingalls is the owner and President of 2 Monkey and Lucky Shot USA. Mr. Ingalls is a Florida Resident who upon information and belief is domiciled at 112213 Lake Butler Blvd Windermere, FL 34786.

JURISDICTION AND VENUE

5. This action arises under the Lanham Act (15 U.S.C. §§ 1116, 1117, 1118 and 1125(a)). In addition, BenShot seeks relief under common law. This Court has jurisdiction over the Lanham Act claim pursuant to 28 U.S.C. §§ 1331. This court has supplemental jurisdiction over the non-federal common law claims family-owned 28 U.S.C. §1367(a) because these claims are so closely related that they form part of the same case or controversy.

6. This court has personal jurisdiction over Lucky Shot USA. Lucky Shot USA conducts business in this judicial district through purposeful, continuous, and systematic contacts, including by offering to sell, selling, and promoting the products which are subject to the claims alleged below.

7. This court has personal jurisdiction over 2 Monkey. 2 Monkey conducts business in this judicial district through purposeful, continuous, and systematic contacts, including by offering to sell, selling, and promoting the products which are subject to the claims below.

8. This court has personal jurisdiction over Ingalls because he was responsible for 2 Monkey's and Lucky Shot USA's promotion, advertisement, and selling of the products that are the subject of this lawsuit in this judicial district.

9. This case is properly venued in this district pursuant to 28 U.S.C. §1391(b) and (c) because Lucky Shot USA and 2 Monkey are both subject to personal jurisdiction in this judicial district and a substantial part of the events giving rise to BenShot's claims occurred in this judicial district and Lucky Shot USA and 2 Monkey engaged in false advertising in this judicial district.

FACTUAL BACKGROUND

10. BenShot is a family-owned business in Hortonville, Wisconsin, and has manufactured and sold unique drinking glass designs since 2015 with an emphasis on providing products solely made in the USA and creating sustainable jobs in the local community.

11. In 2015 BenShot invented and started selling a series of unique and distinct drinking glass designs consisting of a projectile embedded in the side of a drinking glass via an indentation in the glass. The designs included a 0.308 caliber bullet embedded in the side of a shot glass (the "BenShot Bulletproof Shot Glass") and a 0.308 caliber bullet embedded in the side of a tumbler glass (the "BenShot Rocks Glass"), shown by the representative examples below.



12. Within a short period of time, BenShot's unique designs became extremely popular throughout the United States particularly with firearm enthusiasts, military personnel, veterans, patriots of the USA, and customers who highly value products made in the USA.

13. In response to the popularity, BenShot developed and started selling additional unique designs, including a 0.50 BMG caliber bullet embedded in the side of a pint glass (the "BenShot Pint Glass") and a 0.308 caliber bullet embedded in the side of a wine glass (the "BenShot Wine Glass"), shown by the representative examples below.



14. In October 2016, Lucky Shot USA started advertising and selling a shot glass with a 0.308 caliber bullet embedded in the side (the "Lucky Shot Bullet Shot Glass") on at least Amazon.com and www.LuckyShotUSA.com. A representative sample of the Lucky Shot Bullet Shot Glass is shown below.

Lucky Shot



15. In March 2017, Lucky Shot USA started selling a whiskey glass with a 0.308 caliber bullet embedded in the side (the “Lucky Shot Whiskey Glass”) on at least Amazon.com and www.LuckyShotUSA.com. About August 2017 Lucky Shot USA started selling a pint glass with a 0.50 BMG caliber bullet embedded in the side (the “Lucky Shot Pint Glass”) and a wine glass with a 0.308 caliber bullet embedded in the side (the “Lucky Shot Wine Glass”) on at least Amazon.com. A representative sample of the Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass are shown below.



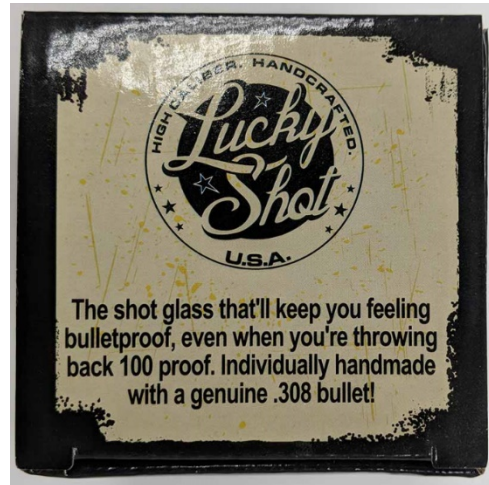
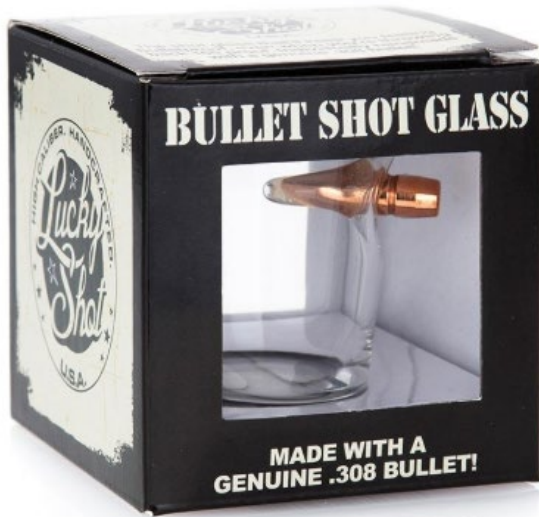
16. Since at least 2017 Lucky Shot USA has operated the website www.MilitaryBalls.com which markets, advertises, promotes and sells Lucky Shot branded products to military and veteran organizations.

17. 2 Monkey is listed as the manufacturer of the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass, and Lucky Shot Wine Glass by Lucky Shot USA on Amazon.com. A printout of the listings taken on October 4, 2018, is attached as Exhibits A – D.
18. The retail packaging of at least the Lucky Shot Bullet Glass, Lucky Shot Whiskey Glass, and Lucky Shot Wine Glass states, “Distributed by 2 Monkey Trading, LLC. Packaging and product design © 2 Monkey Trading, LLC.”
19. 2 Monkey owns the federal trademark registration to the mark “Lucky Shot.” A copy of the resulting Registration, No. 4,608,312, retrieved from the USPTO website is attached as Exhibit E.
20. Lucky Shot USA and 2 Monkey display the terms “U.S.A.” and “HANDCRAFTED” as part of a logo (the “Lucky Shot Logo”) used to market, promote and advertise Lucky Shot branded products on marketing and advertising materials, product packaging and at least the websites LuckyShotUSA.com and 2Monkey.com. A representative sample is shown below.



21. Lucky Shot USA and 2 Monkey advertise and promote the Lucky Shot Bullet Shot Glass as Made in USA.
22. Lucky Shot USA and 2 Monkey’s point-of-purchase displays for the Lucky Shot Bullet Shot Glass includes in large text, which states “MADE IN THE USA” accompanied by an image of the American flag on the display shipper display card. Further, the Lucky Shot Logo is prominently displayed on the display shipper display card with the words “U.S.A.” and “HANDCRAFTED.” A printout of the display is attached as Exhibit F.

23. Below are representative examples of Lucky Shot USA and 2 Monkey's Bullet Shot Glass retail packaging which includes the Lucky Shot Logo prominently displayed on the top and both sides of the packaging with the words "U.S.A." and "HANDCRAFTED."



Top View



Left Side View



Right Side View

24. Further, as shown in Exhibit A, Lucky Shot USA states as a key product feature its Amazon.com listing for the "Bullet Handblown Shot Glass Gift Set – Set of 4" which includes 4 Lucky Shot Bullet Shot Glasses, "Top Premium Quality Brand. Made in the USA[.]"

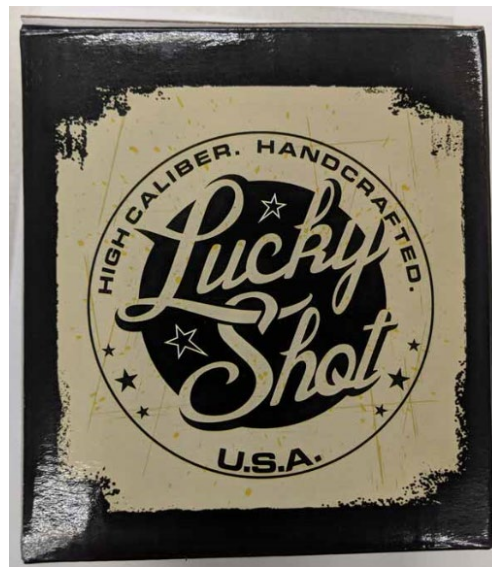
25. Lucky Shot USA and 2 Monkey advertise and promote the Lucky Shot Whiskey Glass as Made in the USA.
26. Lucky Shot USA and 2 Monkey's point-of-purchase displays for the Lucky Shot Whiskey Glass include large text which states, "MADE IN THE USA" accompanied by an image of the American flag on the display shipper display card. Further, the Lucky Shot Logo is prominently displayed on the display shipper display card with the words "U.S.A." and "HANDCRAFTED." A printout of the display is attached as Exhibit G.
27. As shown in Exhibit B, in its listing on Amazon for the Lucky Shot Whiskey Glass, Lucky Shot USA displays partial images of the American flag in front of an image of the Lucky Shot Whiskey Glass and also displays in large text, "MADE IN THE USA" at the bottom of the listing.
28. Below are representative examples of Lucky Shot USA and 2 Monkey's Lucky Shot Whiskey Glass retail packaging which includes prominently displayed on the top and both sides of the packaging with the words "U.S.A." and "HANDCRAFTED."



Top View



Left Side View



Right Side View

29. Lucky Shot USA and 2 Monkey advertise and promote the Lucky Shot Pint Glass and Lucky Shot Wine Glass as Made in USA.
30. Below is a representative example of the product packaging for the Lucky Shot Pint Glass and Lucky Shot Wine Glass which both include the Lucky Shot Logo prominently displayed on the top and on both sides of the packaging with the words “U.S.A.” and “HANDCRAFTED.”



31. As Exhibits C and D illustrate, Lucky Shot USA also states as a key product feature in its Amazon.com listings for the Lucky Shot Pint Glass and the Lucky Shot Wine Glass, “Top Brand items made right here in the USA.” In addition, Lucky Shot USA also displays as part of its listings partial images of the American flag in front of an image of the Lucky Shot Pint Glass and in front of the Lucky Shot Wine Glass.
32. Lucky Shot USA represents its entire product line as Made in USA.
33. As of at least September 10, 2018, Lucky Shot USA states in a welcome letter to new newsletter subscribers, “Each Lucky Shot USA product is American made to cater to the discriminating eye of historians and collectors alike.” Further, the newsletter includes the words “MADE IN THE USA” as part of the Lucky Shot Logo, which appears directly above the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass, and Lucky Shot Wine Glass. A printout of the newsletter is attached as Exhibit H.
34. Lucky Shot USA’s Instagram account profile states, “Our products are proudly made in the USA!” and Lucky Shot USA’s profile image also states, “MADE IN THE U.S.A.” Further, photos of the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass are posted shortly below the made in USA claims. A printout of the first few pages of LuckyShot’s Instagram profile accessed on October 3, 2018, is attached as Exhibit I and also available at: <https://www.instagram.com/luckyshotusa/>.
35. Lucky Shot USA displays on the website, LuckyShotUSA.com, the words “MADE IN THE USA” as part of its newsletter subscription section at the bottom of each page on the website. A printout of the homepage of www.LuckyShotUSA.com as of October 3, 2018, is attached as Exhibit J.

36. Lucky Shot USA states on its website, www.MilitaryBalls.com, “Proudly Made in America” display in front of a picture of at least the Lucky Shot Bullet Shot Glass. A printout of the homepage of www.MilitaryBalls.com accessed on October 12, 2018, is attached as Exhibit K.
37. Lucky Shot USA advertises on Google.com stating, “Lucky Shot USA | Handcrafted in the USA | LuckyShotUSA.com.” A printout of a search completed on Google.com on October 3, 2018, for the terms “Made in China Lucky Shot USA” is attached as Exhibit L.
38. Lucky Shot USA has the term “USA” as part of its legal business name, Lucky Shot USA.
39. LLC. Lucky Shot USA operates the website domain www.LuckyShotUSA.com, which contains the term “USA” as part of the domain name.
40. 2 Monkey represents the entire Lucky Shot branded product line is Made in USA.
41. 2 Monkey displays the Lucky Shot Logo, which includes the terms “U.S.A” and “HANDMADE” within the Logo, on all Lucky Shot branded product packaging.
42. 2 Monkey advertises Lucky Shot branded products using the Lucky Shot Logo with the term “U.S.A” replaced with “MADE IN THE USA” on its website, www.2monkey.com. A printout of the homepage of www.LuckyShotUSA.com as of October 3, 2018, is attached as Exhibit M.
43. In response to Lucky Shot USA and 2 Monkey’s advertising of at least the Lucky Shot Bullet Shot Glass and the Lucky Shot Whiskey Glass as Made in USA, BenShot became increasingly concerned Lucky Shot branded products, and more specifically the Lucky Shot Bullet Shot Glass and the Lucky Shot Whiskey Glass was not in fact made in the USA despite being claimed as such.
44. In March of 2017, Ben Wolfgram (“Wolfgram”) from BenShot had a phone conversation with Ingalls from Lucky Shot USA and 2 Monkey about their copying of BenShot’s Bulletproof Shot Glass and BenShot Rocks Glass designs and competitive behavior.

45. During the conversation, Ingalls admitted the drinking glass with the indentation for the bullet already formed in the glass (the “Glass Portion”) of the Lucky Shot Bullet Shot Glass and the Lucky Shot Whiskey Glass were made in China and not made in the USA.
46. In May of 2018 Wolfgram of BenShot had another phone conversation with Ingalls from Lucky Shot USA and 2 Monkey where Ingalls again admitted the Glass Portion of at least the Lucky Shot Bullet Shot Glass and Lucky Shot Whiskey Glass were made in China and not made in the USA.
47. 2 Monkey offers the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass for sale on at least www.2monkey.com and the international product sourcing website Alibaba.com. A printout of 2 Monkey’s listings for the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass as of October 2, 2018, is attached as Exhibits N - Q.
48. 2 Monkey states in its Company Overview on its Alibaba.com company profile page, “Our products are designed and developed in the USA and contract manufactured in China.” A printout of 2 Monkey’s Company Overview from September 13, 2018, is attached as Exhibit R.
49. As shown in the image below, taken on October 11, 2018, the bottom panel of the packaging for the Lucky Shot Whiskey Glass states, “Glass and packaging made in China.”



50. Upon information and belief, Lucky Shot has sold the Lucky Shot Whiskey Glass with packaging that did not disclose that the glass and packaging were made in China.
51. Upon information and belief, Lucky Shot USA boldly and falsely states and suggests the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass are Made in USA without qualification.
52. Upon information and belief, 2 Monkey boldly and falsely state and suggest the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass, and Lucky Shot Wine Glass are Made in the USA without qualification.
53. According to the Federal Trade Commission (“FTC”), in order for a product to be called “Made in USA,” without qualifications or limits on the claim it must be the product must be ‘all or virtually all’ made in the U.S. Attached as Exhibit S is a copy of the FTC’s manual as of September 13, 2018, “Complying with the MADE IN USA STANDARD.” (the “FTC Manual”). The FTC Manual is also accessible at: <https://www.ftc.gov/tips-advice/business-center/guidance/complying-made-usa-standard>. The FTC Manual further defines “all or virtually

all” as “all significant parts and processing that go into the product must be of U.S. origin. That is, the product should contain no – or negligible – foreign content.”

54. By importing at least the Glass Portion of the Lucky Shot Bullet Shot Glass from China, the Lucky Shot Bullet Shot Glass does not contain “no or – negligible – foreign content.”

55. By importing at least the Glass Portion of the Lucky Shot Whiskey Glass from China, the Lucky Shot Whiskey Glass does not contain “no or – negligible – foreign content.” By importing at least the Glass Portion of the Lucky Shot Pint Glass from China, the Lucky Shot Pint Glass does not contain “no or – negligible – foreign content.”

56. By importing at least the Glass Portion of the Lucky Shot Wine Glass from China, the Lucky Shot Wine Glass does not contain “no or – negligible – foreign content.”

57. Upon information and belief Lucky Shot USA boldly and falsely state and suggest all its products as Made in USA without qualification.

58. Upon information and belief, 2 Monkey boldly and falsely state and suggest the entire Lucky Shot branded product line is Made in USA without qualification.

59. The FTC Manual also states, “Manufacturers and marketers should not indicate, either expressly or implicitly, that a whole product line is of U.S. origin (‘Our products are made in the USA’) when only some products in the product line are made in the U.S. according to the ‘all or virtually all’ standard.”

60. By making improper unqualified Made in USA statements and representations on its product packaging, websites, advertising, and marketing materials relating to the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass, Lucky Shot Wine Glass and the entire line of Lucky Shot branded products, Defendants are making false and misleading material statements of fact, that are causing and likely to continue to cause injury to BenShot due to the

significance and value that “buying American” has on potential and actual customers of the products BenShot sells.

61. A Consumer Reports survey from 2015 found that 77 percent of Americans are willing to pay more for a product that has a Made in America claim. See “*What does the ‘Made in America’ label really mean?*” Consumer Reports, July 2015, available at: www.consumerreports.org/cro/magazine/2015/07/from-our-president-july-2015/index.htm (last visited September 26, 2018).
62. BenShot has spent and continues to spend substantial financial resources in creating and maintaining a glass manufacturing facility as well as advertising and promoting all of its unique and distinct designs as made in the U.S.A., an extremely important factor to its customers and their purchasing decisions.
63. As such, Lucky Shot USA and 2 Monkey’s wrongful conduct in marking and promoting improper unqualified claims and representations the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass products as Made in USA when they are not has egregiously injured BenShot and has been undertaken willfully and with Lucky Shot USA and 2 Monkey’s intent and knowledge that such action would cause confusion, mistake, or deception among the public.
64. Lucky Shot USA and 2 Monkey, by indicating expressly and implicitly all of the Lucky Shot branded product line is of U.S. origin has caused further injury to BenShot and has been undertaken willfully and with intent and knowledge that such action would cause, mistake, or deception among the public.

65. Lucky Shot USA is currently promoting the sale of the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass as Made in USA on its website www.luckyshotusa.com, Amazon.com and in interstate commerce.
66. 2 Monkey is currently promoting the sale of the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass as Made in USA on its website www.2monkey.com, Alibaba.com and in interstate commerce.
67. Lucky Shot USA sells Lucky Shot branded products, including at least the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass and Lucky Shot Wine Glass to customers in this judicial district including but not limited to through its storefront on Amazon.com. An image of the Lucky Shot products and an October 9, 2018, receipt of the product purchased is attached as Exhibits T - W.
68. 2 Monkey sells products at retail locations in this judicial district, including but not limited to Fleet Farm located at 3035 W. Wisconsin Avenue, Appleton, WI 54914. An image of the product and a September 17, 2018 receipt of the product is attached as Exhibits X and Y.

COUNT I
Section 43(a) of the Lanham Act False Designations of Origin
Lucky Shot USA And 2 Monkey

69. BenShot repeats its allegations set forth in paragraphs 1-68 above with if set forth herein in their entirety.
70. Lucky Shot USA sells unique drinking glasses in interstate commerce in the same markets and trade channels as BenShot.
71. 2 Monkey sells unique drinking glasses in interstate commerce in the same markets and trade channels as BenShot.
72. Lucky Shot USA and 2 Monkey's improper unqualified use of Made in USA claims in connection to the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky

Shot Wine glass falsely designates the origin of these products and falsely represent the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass as made in USA. As a result, the public and purchasers believe that at least the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass originate from the USA when they do not.

73. Lucky Shot USA and 2 Monkey's improper unqualified use of Made in USA claims in connection with the entire product line of Lucky Shot branded products falsely suggests and designates the origin of products and falsely represent are all made in the USA. As a result, the public and purchasers to believe that all Lucky Shot branded products originate from the USA when they do not.

74. Lucky Shot USA and 2 Monkey's wrongful conduct constitutes the improper use in Commerce of a symbol, devise or combination thereof, and a false designation of origin, which is likely to deceive as to the origin, or cause consumer confusion, or to cause mistake, sponsorship, or approval in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

75. As a direct and proximate result of Lucky Shot USA and 2 Monkey's actions, BenShot has been and continues to be damaged by Lucky Shot USA and 2 Monkey's acts in an amount not yet determined, which BenShot is entitled to recover. BenShot is entitled to injunctive relief and to all other remedies provided by law, including without limitation those set forth in 15 U.S.C. §§ 1116, 1117, and 1118.

COUNT II
Section 43(a) of the Lanham Act
False Designations of Origin
AGAINST DOUGLAS INGALLS

76. BenShot repeats its allegations set forth in paragraphs 1-75 above with if set forth herein in their entirety.

77. Under the Lanham Act, a corporate officer may be held personally liable for the tortious conduct where the officer is a moving, active conscious force behind the defendant companies' false designation of origin.
78. As the owner and president of 2 Monkey and Lucky Shot USA, Douglas Ingalls had personal knowledge that his companies' representations that the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass as made in USA were untrue.
79. Mr. Ingalls was responsible for 2 Monkey and/or Lucky Shot USA's decision to have the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass, and the Lucky Shot Wine Glass manufactured in China.
80. Mr. Ingalls was responsible for communicating with the Chinese glass suppliers regarding Lucky Shot USA and/or 2 Monkey purchase of the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass, and Lucky Shot Wine Glass.
81. Mr. Ingalls was responsible for marketing the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass, and Lucky Shot Wine Glass in a manner that was intentionally deceiving or misleading to Lucky Shot USA's and 2 Monkey's Customers as to origin of these products in the manner described in this Complaint.
82. Mr. Ingalls had personal knowledge that Lucky Shot USA and/or 2 Monkey were attempting to mislead potential customers as to country of the product's origin. For example, Mr. Ingalls directed the Chinese glass manufacturer to take close up photos and videos of the glass making process. Mr. Ingalls informed the Chinese manufacturer that it is "very important to our media/advertising" that the photos and videos "do not show faces of workers or any words or writing in Chinese. We want our customers to think this product could be made in USA."

83. Mr. Ingalls is therefore jointly and severally liable for the tortious conduct of Lucky Shot USA and 2 Monkey.

**SECOND CLAIM FOR RELIEF
AND SUPPORTING FACTUAL ALLEGATIONS
Common-Law Unfair Competition**

84. BenShot repeats its allegations set forth in paragraphs 1-83 above with the as if set forth herein in their entirety.

85. Taken as a whole, Lucky Shot USA and 2 Monkey's actions in making improper unqualified made in USA claims by improperly marketing, advertising, promoting, and marking the entire product line of Lucky Shot branded products, and more specifically the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass products as made in USA when they are not in an attempt to cause confusion in the marketplace with the intent to deceive consumers.

86. Lucky Shot USA's and 2 Monkey's wrongful conduct constitutes unfair methods of competition and unfair and deceptive acts or practices in trade or commerce and creates a likelihood of confusion, misunderstanding, or deception in the public's minds as to the origin of the parties' goods.

87. Lucky Shot USA and 2 Monkey's unlawful actions have resulted in unjust enrichment of Lucky Shot USA and 2 Monkey and have caused BenShot to suffer substantial damage.

88. As such, Lucky Shot USA and 2 Monkey's conduct causing confusion, mistake, or deception constitutes common law unfair competition.

JURY DEMAND

BenShot demands a trial by jury on all issues triable by a jury.

REQUEST FOR RELIEF

WHEREFORE, BenShot prays that this Court enter judgment in its favor against Lucky Shot USA and 2 Monkey as follows:

- A. A permanent injunction enjoining and restraining Lucky Shot USA and 2 Monkey, its officers, managers, agents, servants, employees, attorneys, parents, subsidiaries, and related companies from:
 - 1. using unqualified Made in USA claims or representations in connection with the advertising, promotion, offering for sale of drinking glasses where such products were not manufactured in the United States of America; and
 - 2. otherwise competing unfairly with BenShot.
- B. Finding that Lucky Shot USA and 2 Monkey have unfairly competed with BenShot by the acts complained of herein.
- C. Finding that Ingalls directed Lucky Shot USA and 2 Monkey's tortious conduct.
- D. Directing that Lucky Shot USA and 2 Monkey destroy at Lucky Shot USA and 2 Monkey's cost all signs, products, packaging, promotional material, advertising material, catalogs, and any other items relating to Lucky Shot branded products, the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass that bear or suggest improper unqualified Made in USA claims or representations.
- E. Directing that Lucky Shot USA and 2 Monkey recall from all distributors, retailers, or other recipients any and all Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass, Lucky Shot Wine Glass, and Lucky Shot branded product and packaging that bear or suggest improper unqualified Made in USA claims or representations sold or distributed by Lucky Shot USA and 2 Monkey and, upon recall, to deliver such goods up to BenShot's counsel for destruction or donation at Lucky Shot USA and 2 Monkey's costs.

F. Directing that Lucky Shot USA and 2 Monkey engage in corrective advertising designed to inform past, present, and potential consumers of each and every Lucky Shot branded product with improper unqualified Made in USA claims or representations, including the Lucky Shot Bullet Shot Glass, Lucky Shot Whiskey Glass, Lucky Shot Pint Glass and Lucky Shot Wine Glass, or in a manner directed by the court.

G. That Lucky Shot USA and 2 Monkey be required, in accordance with Section 34(a) of the U.S. Trademark Act, 15 U.S.C. §1116(a), to file with the Court and serve upon BenShot, a report in writing, under oath, setting forth in detail the manner and form in which Lucky Shot USA and 2 Monkey have complied with the terms of any injunction entered by this Court.

H. Requiring Lucky Shot USA and 2 Monkey to account for and pay over to BenShot all profits realized by it by reason of its unlawful acts in violation of false advertising and unfair competition.

I. A finding that this case is exceptional within the meaning of 15 U.S.C. §1117(a) for reason of Lucky Shot USA and 2 Monkey's conduct.

J. BenShot's actual cost in bringing this civil action, including actual and reasonable attorneys' fees pursuant to 15 U.S.C. §1117(a).

K. A finding that Ingalls is jointly and severally liable for 2 Monkey and Lucky Shot USA's tortious conduct.

L. An order requiring Lucky Shot USA and 2 Monkey to pay BenShot punitive damages in an amount as yet undetermined caused by the foregoing acts of Lucky Shot USA and 2 Monkey.

M. Any other relief determined by the Court.

Dated this 30th day of December 2019.

Respectfully submitted,

By s/John M. Osmanski
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